



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2019-0137]

RIN 1625-AA08

Special Local Regulation; Breton Bay, McIntosh Run, Leonardtown, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for certain navigable waters of the Breton Bay and McIntosh Run. This action is necessary to provide for the safety of life on these waters located at Leonardtown, MD, on October 5, 2019, and October 6, 2019, during a high-speed power boat demonstration event. This regulation prohibits persons and vessels from being in the regulated area unless authorized by the Captain of the Port Maryland-National Capital Region or Coast Guard Patrol Commander.

DATES: This rule is effective from 8 a.m. on October 5, 2019, to 6 p.m. on October 6, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2019-0137 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Ronald Houck, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410-576-2674, email *Ronald.L.Houck@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
PATCOM	Coast Guard Patrol Commander
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Southern Maryland Boat Club of Leonardtown, MD, notified the Coast Guard that from 9 a.m. to 5 p.m. on October 5, 2019, and from 9 a.m. to 5 p.m. on October 6, 2019, it will be conducting the Southern Maryland Boat Club Bash on the Bay in Breton Bay and McIntosh Run at Leonardtown, MD. In response, on March 18, 2019, the Coast Guard published a notice of proposed rulemaking (NPRM) titled "Special Local Regulation; Breton Bay, McIntosh Run, Leonardtown, MD" (84 FR 9731). There we stated why we issued the NPRM and invited comments on our proposed regulatory action related to this power boat demonstration event. During the comment period that ended April 17, 2019, we received no comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The Captain of the Port Maryland-National Capital Region (COTP) has determined that potential hazards associated with this power boat demonstration event will be a safety

concern for anyone intending to operate in or near the demonstration area. The purpose of this rule is to protect event participants, spectators, and transiting vessels on specified waters of Breton Bay and McIntosh Run before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published March 18, 2019. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a special local regulation to be enforced from 8 a.m. to 6 p.m. on October 5, 2019, and from 8 a.m. to 6 p.m. on October 6, 2019. The regulated area will cover all navigable waters Breton Bay and McIntosh Run, immediately adjacent to Leonardtown, MD shoreline, from shoreline to shoreline, within an area bounded to the east by a line drawn along latitude 38°16'43" N and bounded to the west by a line drawn along longitude 076°38'30" W, located at Leonardtown, MD. This special local regulation provides additional information about areas within the regulated area, their definitions, and the restrictions that will apply. These areas include a "Course Area", "Buffer Zone", "Milling Area" and "Spectator Area". They lie within an area bounded to the east by a line drawn along latitude 38°16'43" N and bounded to the west by a line drawn along longitude 076°38'30" W, located in Breton Bay and McIntosh Run, at Leonardtown, MD. The duration of the special local regulations and size of the regulated area are intended to ensure the safety of life on these navigable waters before, during, and after this power boat demonstration event, scheduled from 9 a.m. until 5 p.m. on October 5, 2019, and October 6, 2019. Except for participants and vessels already at berth, a vessel or person will be required to get permission from the COTP or PATCOM before

entering the regulated area while the rule is being enforced. Vessel operators can request permission to enter and transit through the regulated area by contacting the PATCOM on VHF-FM channel 16. Vessel traffic will be able to safely transit the regulated area once the PATCOM deems it safe to do so. If permission is granted by the COTP or PATCOM, a person or vessel will be allowed to enter the regulated area or pass directly through the regulated area as instructed. Vessels will be required to operate at a safe speed that minimizes wake while within the regulated area. Official Patrol vessels will direct spectator vessels while within the regulated area. Official Patrols are any vessel assigned or approved by the Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign. Vessels will be prohibited from loitering within the navigable channel. Only participant vessels and Official Patrols will be allowed to enter the course area and milling area. A person or vessel not registered with the event sponsor as a participant or assigned as Official Patrols will be considered a spectator. Spectators are only allowed inside the regulated area if they remain within a designated spectator area. All spectator vessels must be anchored or operate at a No Wake Speed within a designated spectator area. Spectators must contact the PATCOM to request permission to pass through the regulated area. If permission is granted, spectators must pass directly through the regulated area at safe speed and without loitering.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, duration and time of year of the power boat demonstration event, which will impact a small designated area of Breton Bay and McIntosh Run for 20 total enforcement hours. The Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the status of the special local regulation. Moreover, the rule will allow vessels to seek permission to enter the regulated area, and vessel traffic will be able to safely transit the regulated area once the COTP or PATCOM deems it safe to do so.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have

a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national

government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not

individually or cumulatively have a significant effect on the human environment. This rule involves implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States. The temporary regulated area will be enforced for 20 hours during the power boat demonstration event. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Memorandum For Record for Categorically Excluded Actions supporting this determination is available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100--SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05-1.

2. Add § 100.501T05-0137 to read as follows:

§ 100.501T05-0137 Special Local Regulation; Breton Bay, McIntosh Run,

Leonardtown, MD.

(a) *Definitions.* As used in this section:

Buffer zone is a neutral area that surrounds the perimeter of the Course Area within the regulated area described by this section. The purpose of a buffer zone is to minimize potential collision conflicts with marine event participants and spectator vessels or nearby transiting vessels. This area provides separation between a Course Area and a specified Spectator Area or other vessels that are operating in the vicinity of the regulated area established by the special local regulations.

Captain of the Port (COTP) Maryland-National Capital Region means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to act on his behalf.

Coast Guard Patrol Commander (PATCOM) means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

Course area is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a high-speed power boat demonstration area within the regulated area defined by this section.

Milling area is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a milling area within the regulated area defined by this section. The area is used before a demonstration start to warm up the boats engines.

Official patrol means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

Participant means a person or vessel registered with the event sponsor as participating in the Southern Maryland Boat Club Bash on the Bay or otherwise designated by the event sponsor as having a function tied to the event.

Spectator means a person or vessel not registered with the event sponsor as participants or assigned as official patrols.

Spectator area is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a spectator area within the regulated area defined by this part.

(b) *Locations.* All coordinates reference Datum NAD 1983.

(1) *Regulated area.* All navigable waters of Breton Bay and McIntosh Run, immediately adjacent to Leonardtown, MD shoreline, from shoreline to shoreline, within an area bounded to the east by a line drawn along latitude 38°16'43" N and bounded to the west by a line drawn along longitude 076°38'30" W, located at Leonardtown, MD. The following locations are within the regulated area:

(2) *Course area.* The course area is a polygon in shape measuring approximately 940 yards in length by 228 yards in width. The area is bounded by a line commencing at position latitude 38°17'09.78" N, longitude 076°38'22.71" W; thence southeasterly to latitude 38°16'58.62" N, longitude 076°37'50.91" W; thence southwesterly to latitude 38°16'51.89" N, longitude 076°37'55.82" W; thence northwesterly to latitude

38°17'05.44" N, longitude 076°38'27.20" W; thence northeasterly terminating at point of origin.

(3) *Buffer zone.* The buffer zone surrounds the entire course area described in the preceding paragraph of this section. This area is a polygon in shape and provides a buffer around the perimeter of the course area. The area is bounded by a line commencing at the shoreline west of Leonardtown Wharf Park at position latitude 38°17'13.80" N, longitude 076°38'24.72" W; thence easterly to latitude 38°16'58.61" N, longitude 076°37'44.29" W; thence southerly to latitude 38°16'46.35" N, longitude 076°37'52.54" W; thence westerly to latitude 38°16'58.78" N, longitude 076°38'26.63" W; thence northerly to latitude 38°17'07.50" N, longitude 076°38'30.00" W; thence northeasterly terminating at point of origin.

(4) *Milling area.* The milling area is a polygon in shape and is bounded by a line commencing at the shoreline east of Leonardtown Wharf Park at position latitude 38°17'10.07" N, longitude 076°38'14.87" W; thence easterly and southerly along the shoreline to latitude 38°17'01.54" N, longitude 076°37'52.24" W; thence westerly terminating at point of origin.

(5) *Spectator areas—(i) Northeast Spectator Fleet Area.* The designated spectator area is bounded by a line commencing at position latitude 38°16'59.10" N, longitude 076°37'45.60" W, thence northeasterly to latitude 38°17'01.76" N, longitude 076°37'43.71" W, thence southeasterly to latitude 38°16'59.23" N, longitude 076°37'37.25" W, thence southwesterly to latitude 38°16'53.32" N, longitude 076°37'40.85" W, thence northwesterly to latitude 38°16'55.48" N, longitude

076°37'46.39" W, thence northeasterly to latitude 38°16'58.61" N, longitude 076°37'44.29" W, thence northwesterly to point of origin.

(ii) *Southeast Spectator Fleet Area*. The designated spectator area is bounded by a line commencing at position latitude 38°16'47.20" N, longitude 076°37'54.80" W, thence southerly to latitude 38°16'43.30" N, longitude 076°37'55.20" W, thence easterly to latitude 38°16'43.20" N, longitude 076°37'47.80" W, thence northerly to latitude 38°16'44.80" N, longitude 076°37'48.20" W, thence northwesterly to point of origin.

(iii) *South Spectator Fleet Area*. The designated spectator area is bounded by a line commencing at position latitude 38°16'55.36" N, longitude 076°38'17.26" W, thence southeasterly to latitude 38°16'50.39" N, longitude 076°38'03.69" W, thence southerly to latitude 38°16'48.87" N, longitude 076°38'03.68" W, thence northwesterly to latitude 38°16'53.82" N, longitude 076°38'17.28" W, thence northerly to point of origin

(c) *Special local regulations*. (1) The COTP Maryland—National Capital Region or PATCOM may forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area must immediately comply with the directions given by the patrol. Failure to do so may result in the Coast Guard expelling the person or vessel from the area, issuing a citation for failure to comply, or both. The COTP Maryland—National Capital Region or PATCOM may terminate the event, or a participant's operations at any time the COTP Maryland—National Capital Region or PATCOM believes it necessary to do so for the protection of life or property.

(2) Except for participants and vessels already at berth, a person or vessel within the regulated area at the start of enforcement of this section must immediately depart the regulated area.

(3) A spectator must contact the PATCOM to request permission to either enter or pass through the regulated area. The PATCOM, and official patrol vessels enforcing this regulated area, can be contacted on marine band radio VHF-FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz). If permission is granted, the spectator may enter a designated Spectator Area or must pass directly through the regulated area as instructed by PATCOM. A vessel within the regulated area must operate at safe speed that minimizes wake. A spectator vessel must not loiter within the navigable channel while within the regulated area.

(4) A person or vessel that desires to transit, moor, or anchor within the regulated area must first obtain authorization from the COTP Maryland—National Capital Region or PATCOM. A person or vessel seeking such permission can contact the COTP Maryland—National Capital Region at telephone number 410-576-2693 or on Marine Band Radio, VHF-FM channel 16 (156.8 MHz) or the PATCOM on Marine Band Radio, VHF-FM channel 16 (156.8 MHz).

(5) Only participant vessels and official patrol vessels are allowed to enter the course area and milling area.

(6) Spectators are only allowed inside the regulated area if they remain within the designated spectator area. All spectator vessels must be anchored or operate at a No Wake Speed within a designated spectator area. Official patrol vessels will direct spectator vessels to the spectator area. Spectators must contact the Coast Guard Patrol

Commander to request permission to pass through the regulated area. If permission is granted, spectators must pass directly through the regulated area at safe speed and without loitering.

(7) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF-FM marine band radio announcing specific event dates and times.

(d) *Enforcement officials.* The Coast Guard may be assisted with marine event patrol and enforcement of the regulated area by other Federal, State, and local agencies.

(e) *Enforcement periods.* This section will be enforced from 8 a.m. to 6 p.m. on October 5, 2019, and from 8 a.m. to 6 p.m. on October 6, 2019.

Dated: May 3, 2019.

Joseph B. Loring,
Captain, U.S. Coast Guard,
Captain of the Port Maryland-National Capital Region.
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